

- c. Submit their proposed written notice to the Commission's Public Advisor's Office for approval prior to mailing to grandfathered subscribers and resellers.
- d. Place those subscribers not selecting an alternate service plan within the grandfathered time period on the most economic plan for the subscriber, based on an analysis of the subscriber's actual usage.

5. A Commission workshop to prepare an "Important Information Booklet" for cellular subscribers shall not be scheduled at this time. However, the cellular industry, consisting of facilities-based carriers and resellers, is strongly encouraged to implement the Cellular Carriers Association of California, Inc.'s workshop proposal discussed in the body of this order.

6. All cellular carriers that offer cellular service contracts with automatic renewal clauses, including resellers, shall file within 60 days after the effective date of this order, advice letters to incorporate the following consumer cellular rate band guidelines into their current tariffs:

- a. All automatic renewable contracts with penalties for early withdrawal shall require signed agreements, using a sample contract form filed in the tariffs.
- b. No penalties shall be assessed after the subscriber completes the term of the first contract period.
- c. Contracts shall be limited to no more than 3 years, including renewal periods (e.g., 1 3-year contract--no renewals, 1 year contract with 2 renewals).
- d. Carriers notify subscribers 45 days prior to the contract expiration date so that the subscribers may select an alternate service plan. Carriers shall also comply with the requirements of Ordering Paragraph 4c. Subscribers who do not choose a new plan when the contract

expires shall default to the cellular carrier's most economical plan based on the subscribers' actual usage pattern.

- e. Contract penalties for terminating contracts prematurely shall be prorated over the life of the contracts.

7. The Commission's Executive Director shall serve a copy of this order on all California certificated cellular wholesalers and cellular resellers.

This order is effective today.

Dated April 6, 1994, at San Francisco, California.

DANIEL Wm. FESSLER
President
PATRICIA M. ECKERT
NORMAN D. SHUMWAY
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
Commissioners

MAY 9 1994

Decision 94-05-027 May 6, 1994

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation of the Commission's)	I.88-11-040
own motion into the regulation of)	(Filed November 23, 1988,
cellular radiotelephone utilities.)	Petition to Modify
)	Decision 90-06-025
)	filed December 2, 1993)
)	
)	Application 87-02-017
And Related Matter.)	(Filed February 6, 1987)
)	

**ORDER CORRECTING AN INADVERTENT ERROR
OF DECISION 94-04-043**

Decision (D.) 94-04-043's Ordering paragraph 6(d) (Ordering Paragraph) contains an inadvertent error pertaining to the time period in which cellular carriers must notify subscribers prior to any contract expiration date. The ordering paragraph, as issued, requires cellular carriers to provide subscribers 45 days notice prior to the contract expiration date.

Obviously, it is impossible to insure that subscribers are notified exactly 45 days prior to the contract expiration date. The stated notification requirement should have been between 30 and 60 days, and consistent with the 30 to 60 day notification requirement for grandfathered tariff subscribers identified in Ordering Paragraph 4(b) of the same decision. Accordingly, the Ordering Paragraph should be revised to properly reflect the 30 to 60-day time period.

Pursuant to Resolution A-4661, dated March 9, 1977, this corrective order should be issued by the Executive Director and should be made effective upon the date signed.

Findings of Fact

1. Resolution A-4661 authorized the Executive Director to issue a corrective order in instances where a Commission Decision contains an obvious, inadvertent error and omission.

2. Ordering Paragraph 6(d) of D.94-04-043 contains an obvious, inadvertent error and omission.

Conclusion of Law

The obvious, inadvertent error and omission should be corrected.

O R D E R

IT IS ORDERED that Ordering Paragraph 6(d) of Decision 94-04-043 shall be corrected as follows:

- 6(d) Carriers notify subscribers between 30 and 60 days prior to the contract expiration date so that the subscribers may select an alternate service plan. Carriers shall also comply with the requirements of Ordering Paragraph 4c. Subscribers who do not choose a new plan when the contract expires shall default to the cellular carrier's most economical plan based on the subscribers' actual usage pattern.

This order is effective today.

Dated May 6, 1994, at San Francisco, California.

/s/ NEAL J. SHULMAN
NEAL J. SHULMAN
Executive Director

Lee Kelly
RECEIVED

DEC 27 1993

C-2

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

COMMISSION ADVISORY AND COMPLIANCE DIVISION RESOLUTION T-15325
Telecommunications Branch December 17, 1993

R E S O L U T I O N

RESOLUTION T-15325. INTRODUCTION OF THE VOLUME USER
PLAN FOR RETAIL CUSTOMERS OF BAY AREA CELLULAR TELEPHONE
COMPANY (BACTC).

BY ADVICE LETTER NO. 193 FILED ON FEBRUARY 2, 1993.

SUMMARY

Bay Area Cellular Telephone Company (BACTC) proposes a new plan for volume users, the Volume User Plan, which would reduce access and usage rates for customers who subscribe to 20 or more access numbers. BACTC's filing was protested by the Cellular Resellers Association (CRA) and Personal Cellular Services (PCS) on the grounds the proposed plan eliminates the wholesale/retail margin established in D.90-06-025 and the proposed plan is anticompetitive.

The underlying principle, as established in D.90-06-025, in evaluating volume-user rates is to strike a balance between passing the benefits of economies of scale to volume users and enhancing competition by providing resellers an opportunity to participate in the volume user market. The best forum to achieve this objective and to address the industry-wide issues raised by the protestants is the application process. Hence, BACTC's advice letter filing which proposes the Volume User Plan is denied without prejudice and BACTC is invited to file an application for its proposed plan.

BACKGROUND

Bay Area Cellular Telephone Company, a facilities-based carrier, proposes to introduce a new volume-user rate, the Volume User Plan, to its retail customers. According to the proposed Volume User Plan, a Master Customer is defined as:

- "(a) subscriber that purchases cellular service for its own use, or (b) a corporation or other legally organized entity that (i) purchases service in volume for its properly qualifying members, officers, or employees, (ii) guarantees payment for all usage by its members, officers, or employees, and (iii) does not apply any additional charge for such such cellular service to its

members, officers or employees." (proposed Schedule 3-T, 5th revision of Sheet 5-4)

BACTC would bill only the Master Customer for service.

Under the Volume User Plan, the level of discounting would depend on the aggregate minutes of use during both peak and off-peak periods by all numbers activated by the Master Customer. The aggregate minutes of use must be equal or greater than 3000 minutes before there is any discounting relative to the retail Basic Service Plan¹. All rates elements: access fee, peak rate, and off-peak rates would be discounted. The level of discounting would be a function of the aggregate minutes of use. The higher the total minutes of use, the larger is the discount.

In comparison to the Volume User Plan, BACTC's existing volume-user plan, Large Organization Plan, provides a discount to a Master Customer who is on the Basic Service Plan and subscribes to a minimum of 50 access numbers. The level of the discount depends on the Master Customer's monthly dollar billing based on the Basic Service Plan's rates. The monthly billing under the Basic Service Plan must be \$5000 or more before there is any discount. The other terms and conditions of the Large Organization Plan are similar to those in the proposed Volume User Plan. However the Large Organization Plan does not impose an early termination fee.

BACTC's Volume User Plan is similar to the Multi-User Plan filed by GTE Mobilnet of California (GTEM-CA's Advice Letter No. 167) which is also before the Commission today. In both advice letters, a Master Customer who subscribes to a minimum level of numbers (in BACTC's case the threshold is 20 numbers compared to GTEM-CA's minimum of 5 numbers) would receive reduced rates. The BACTC Volume User Plan, also like the GTEM-CA's Multi-User Plan, would require a one year commitment and \$200/number early termination fee. However, the BACTC Volume User Plan differs from the GTEM-CA Multi-User Plan in that the Multi-User Plan proposes to limit the plan to business customers who meet the minimum threshold level of access numbers, whereas Volume User Plan has no such restriction on customer type.

BACTC's advice filing also proposes to change the wholesale tariff such that the initial order made by a reseller is reduced to 20 numbers instead of the current requirement of 50 numbers. Additionally, BACTC proposes to change the conditions under which temporary service is offered. Specifically, in the event a Master Customer under the Volume User Plan cancels or leaves the plan prior to the end of the 12 month commitment, end users will automatically revert the retail Basic Service Plan for a period up to 30 days. For all customers, BACTC is requesting authority to add two options: a credit check and a usage

1 Relative to the retail Basic Service Plan as of April 26, 1993.

limitation to its current discretionary policy of a deposit payment for temporary service.

PROTESTS

BACTC's Advice Letter No. 193 was noticed in the Commission calendar on February 8, 1993. Both Personal Cellular Services, Inc. (PCS) and Cellular Resellers Association (CRA) filed protests to BACTC's advice letter filing. CRA's and PCS's protests are based on arguments similar to those stated in their protests to GTEM-CA Advice Letter No. 167.

On February 18, 1993, PCS protested BACTC's advice letter filing on the specific grounds:

(1) BACTC violates the wholesale/retail spread established in Ordering Paragraph 15 of D.90-06-025 because it has not tariffed a corresponding wholesale rate.

(2) BACTC has not demonstrated there are efficiencies or economies of scale for a 20 number customer and these efficiencies are not available for a customer with 19 or fewer numbers. Hence, BACTC has not justified the volume-user (large-user) wholesale/retail spread of 5%.

(3) D.90-06-025's criterion for large use customers who receive discounts is based on the number of access numbers (50 numbers) and not minutes of use.

(4) A 50 number customer is no longer a large customer in today's environment and resellers cannot compete on the 5% margin for the large use customer market. The threshold level justifying large-user pricing should be increased from 50 numbers. The cost of doing business is greater than 5%, absent subsidization of retail operations by the wholesale sales. The advice letter will have the greatest impact on resellers that are price competitive.

(5) BACTC already has a large-user rate and D.90-06-025's discussion is limited to a single large-user rate.

PCS's protest also requests a hearing to investigate the 50 number threshold for large-user plans.

On February 22, 1993, CRA filed its protest to the BACTC advice letter. Based on its interpretation of various Commission decisions (citations in footnotes), CRA contends BACTC's proposal fails to meet the following policies established by the Commission (as interpreted by CRA):

1) 50+ number as the minimum level for volume users and anything else requires an evidentiary showing of actual

economies of scale² because the Volume User Plan sets 20 as the minimum level.

2) facilities-based carriers show that their retail operations break even on a retail basis with the proposed plan³ and the proposed plan is above cost⁴ because BACTC did not include any of the aforementioned showings in the advice letter filing. CRA notes even if BACTC filed a showing, the Commission has no way to determine whether BACTC's operation is breaking even because the USOA rules for cost allocation are pending rehearing.

3) competitive⁵ equity for resellers to participate in the volume user market⁵ because BACTC's plan eliminates the opportunity for resellers to compete for 20+ number customer market.)

CRA further asserts BACTC's plan is in violation of Section 451 of the Public Utilities Code because the proposed rates and rules are unreasonable and Section 453 and 532 because the proposed plan is unjustly discriminatory against resellers.

On March 1, 1993, BACTC responded to PCS's and CRA's protests. Much of BACTC's reply to the protestants hinges on BACTC's assertion that no corresponding wholesale tariff for volume-user plans is required in any Commission decision. BACTC further reasons that since there is no required wholesale rate, there is no margin for volume-user plans and if there is no margin, then a showing that the retail division is breaking even is not necessary.

With respect to the 50 number minimum requirement for a volume user, BACTC contends D.84-04-014, the decision cited by CRA to support the 50 number minimum claim, approved proposed tariff language which set the minimum initial order of access numbers at 50 and this approval should not be interpreted as the Commission's policy that bulk rates require a minimum of 50 numbers. BACTC also argues currently there are carriers offering discounts to customers that subscribe to fewer than 50 numbers. BACTC cites tariffs of U.S. West, Los Angeles Cellular

2 D.90-06-025, p. 33, D.90-10-47, pp. 6-7,
D.84-11-029, p. 58a and Appendix A at p.6, D.84-04-014, p. 32,
and D.89-05-024.

3 D.90-06-025, p.74

4 D.90-06-025, p.32

5 D.90-06-025, pp. 87-88 and D.90-10-047, p.7

Telephone Company, and Los Angeles SMSA Ltd. Partnership⁶.

BACTC believes PCS's position that there is the only one volume-user plan per facilities-based carrier is counter to the Commission's policy to let the marketplace decide on cellular rates and types of plans.

BACTC also claims the resellers have filed similar protests to the volume-user plans in the past which suggests resellers are using the regulatory process to delay the introduction of volume-user plans.

On April 9, 1993, PCS replied to BACTC's response to the initial protests. In its reply, PCS reiterates some of its previous positions. PCS does contend BACTC's argument for its Volume User Plan based on the existence of large-user tariffs in other markets is irrelevant because the lack of protests against large-user tariffs in other markets should not justify BACTC's proposal which is in violation of D.90-06-025.

DISCUSSION

In Decision 90-06-025, we established the general principle to be used in evaluating bulk rates for large users. "It is that balance between the level of economies of scale that should be passed back to the bulk-rate user and the extent of the reseller competition for the large user, that must be considered." (D.90-06-025, p. 33)

We believe there is support for the resellers' argument that a large user is required to purchase a minimum level of 50 numbers. Decision 89-05-024, which prevented BACTC from expanding its wholesale rates to the San Jose Real Estate Board is one of the earlier Commission decisions which addressed large-user rates. Although D.89-05-024 ultimately deferred the final determination of a large organization as applied to wholesale rates to Order Instituting Investigation 88-11-040, it did permit BACTC to offer wholesale service to other large organizations which purchase 50 or more numbers provided the numbers were for the exclusive use of the organization (D.89-05-024 at page 23).

Even though there may be merit in the resellers' position that one of the qualifications of a large user is a 50 number minimum subscription, we must keep in mind our overall objective of maintaining a balance between passing the benefits of economies of scale to volume users and enhancing competition by providing

6 U.S. West Cellular Of California, Schedule 3-T,
5th Rev. Sheet No.3
Los Angeles Cellular Telephone Co., Schedule 3-T,
2nd Rev. Sheet No. 6-1
Los Angeles SMSA Ltd. Partnership, Schedule 2-T,
6th Rev. Sheet 4-B

resellers an opportunity to participate in the volume user market. If there are economies of scale from serving a customer with less than 50 numbers, these benefits should be flowed to customers, provided that in doing so, the long-term benefits of a competitive marketplace are not compromised. However, it is not clear at what point reducing rates to volume users is not economically justified and would only exclude resellers from competing in the marketplace.

The advice letter process is not well suited for the difficult task of balancing conflicting goals, which requires an assessment of economies of scale and competitive impacts of rate proposals. The advice letter process is also not the best vehicle to address issues, such as those raised by the protestants, which impact all carriers in the industry. The most appropriate forum to address BACTC's proposed Volume User Plan as well as GTEM-CA's Multi User Plan is the application process. In the application process we can fully evaluate on an industry-wide basis:

- 1) the requirements of a volume user in order to obtain reduced rates, including but not limited to some of issues raised by the protestants such as:
 - a) minimum number of access lines per subscriber
 - b) organization structure of the volume user, i.e., limiting volume-user rates to businesses
 - c) the Master Customer providing information on individual end users
- 2) the factors impacting the resellers' ability to compete in the volume user market including but not limited to:
 - a) requirements of a volume user
 - b) 5% difference between volume-user rates and wholesale rates
 - c) lack of a corresponding wholesale tariff for volume-user rates

Furthermore, both facilities-based carriers and resellers would be afforded the opportunity to justify their positions in an application proceeding.

Since we are better equipped to achieve our objective of balancing conflicting goals and to address issues on an industry-wide level in an application proceeding, BACTC's advice letter filing is rejected without prejudice and BACTC is invited to file an application for its proposed volume-user rate.

FINDINGS

1. Decision 89-05-024 at page 23 supports the resellers' claim that the minimum subscription level for a volume user is 50 numbers.

7 Issue raised in protests to GTEM-CA's Advice Letter No. 167.
8 IBID

2. The overriding objective, as established in D.90-06-025, in evaluating volume-user rate proposals is to balance the benefits from passing economies of scale to volume users and the benefits from a competitive marketplace by providing resellers an opportunity to participate in the volume user market.

3. Although there may be some merit to the resellers' position that a volume user must purchase a minimum of 50 numbers, this requirement must be considered in view of our primary objective of balancing benefits to customers from economies to scale with the benefits of a competitive marketplace by providing resellers an opportunity to compete for the volume user market.

4. The issues raised by the protestants are also applicable to all other carriers.

5. The advice letter process is not well suited to the difficult task of balancing conflicting goals and addressing issues on an industry-wide basis.

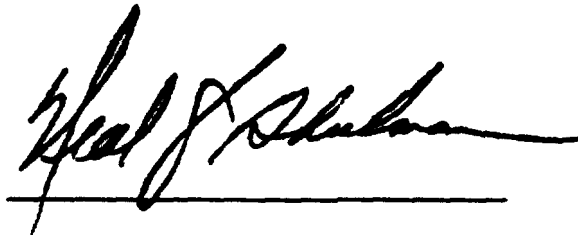
6. An application proceeding is the most appropriate forum for meeting our objective and addressing industry-wide issues.

THEREFORE, IT IS ORDERED that:

1. Bay Area Cellular Telephone Company's advice letter filing is rejected without prejudice and BACTC is invited to file an application for its proposed volume-user rate.

This resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on December 17, 1993. The following Commissioners approved it:



NEAL J. SHULMAN
Executive Director

DANIEL Wm. FESSLER
President
PATRICIA M. ECKERT
NORMAN D. SHUMWAY
P. GREGORY CONLON
JESSIE J. KNIGHT, Jr.
Commissioners

COM/DWF/jrd *

RECEIVED

APR 26 1993

Mailed

APR 23 1993

Decision 93-04-058 April 21, 1993

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
own motion into the regulation of) I.88-11-040
cellular radiotelephone utilities.) (Filed November 23, 1988)

And Related Matter.)
Application 87-02-017
(Filed February 6, 1987)

INTERIM OPINION

(For appearances see Decision 92-10-026.)

Background

On March 25, 1993 President Fessler issued the following statement in a Commissioner Ruling:

Cellular subscribers in California suffer the dubious distinction of paying among the highest rates in the nation. This situation is intolerable and must be changed. Over time our predecessors have suggested that a lack of competition born of the federally mandated duopoly nature of the industry has caused wholesale cellular rates to defy the forces of meaningful competition and remain high. In the Phase II Decision, the Commission majority noted that the cellular wholesalers held the FCC-granted right to use scarce radio frequencies or spectrum in public trust. The beneficiaries of this trust were the members of the public and not those who by happenstance or design had acquired a position as one of the duopolists.

It is economically efficient and an appropriate spur to system and service expansion for wholesale carriers to keep those profits. However, it is neither efficient nor appropriate for wholesale carriers to earn additional profits due to a failure to compete. As we indicated, such a failure would be demonstrated clearly by the observation that a wholesale carrier's system was operating substantially below the limits of its capacity despite charging prices that more than cover out-of-pocket costs of operation. . . . Similarly, the wholesale carriers in a given market could also reap such failure-to-compete profits by failing to expand their system capacity when such expansion was both feasible and economic with respect to current cellular service rates. In that case, the artificial limitation on

capacity would keep prices higher than they would be if the systems were properly expanded.

There is also an intuitive reasoning to these scenarios that does not require sophisticated economic analysis. If a cellular carrier is keeping prices high to discourage demand when capacity is clearly available, then the public is losing some of the service it ought to enjoy. If a carrier is refusing to expand capacity because the additional supply would depress prices, then the public is losing the service it ought to enjoy due to the new investment. In either case the cellular wholesaler would be abusing the public trust placed in it by the FCC in its licensing decision and by this Commission in its grant of the CPCN to serve the public.

As we have discussed, it is the proper public policy to forbear from any rate of return or profit-based regulation of cellular wholesalers that are pricing their services competitively. However, we would be disposed quite differently towards a cellular wholesale carrier that violated the public trust by withholding services to make extra profits. In such an instance occurred, we would initiate an investigation of the rates of the carrier in question and impose an appropriate and punitive constraint on its profits.

Id., 36 CPUC2d at 495.

The majority elected to provide the industry with the opportunity to demonstrate that genuine competition existed between the duopolists. Specifically, it rejected regulation of the industry in favor of steps which would "enhance competition." *Id.*, at 494.¹ The majority's expectation was that if competition were to emerge to discipline the duopolists the evidence would be furnished by falling rates. To that end the majority adopted what it termed a scheme

¹Commissioner Frederick R. Duda dissented contending that the majority's tolerance for a continuation of rates which he deemed to be excessive amounted to an abdication of the Commission's responsibility under Public Utilities Code Section 451 which requires that all rates subject to the Commission's jurisdiction be "just and reasonable." 36 CPUC2d at 520. Commissioner Duda based his opinion that rates were excessive on data provided by the Commission's Advisory and Compliance Division that showed that five carrier in three major markets earned returns on investment ranging from over 20 to more than 50 percent. Other participants in the Phase II proceeding had offered evidence that investment returns for the industry actually ranged from 25 to 123 percent.

of pricing flexibility to ensure that the Commission's regulatory process would not stand between duopolists bent on lowering prices and a consuming public too long in need of such relief.²

The Commission's findings and expectations were made quite plain:
...The record generally indicates that limits on the spectrum are not a constraint on carriers at the present time. Given the rapid growth in consumer demand for cellular service, that circumstance may change for at least some systems. However, for underutilized systems we will expect rates to fall substantially and quickly following our grant of pricing flexibility. . . Further, California's major markets should be converting to digital service as soon as that technology is commercially available. Digital conversion will provide three to four times the present capacity. Carriers will need to cut prices sharply to fill that capacity. If they do not, then we will do it for them based on the results of our monitoring. We will also expect the geographical scope of service availability to continue to expand, with corresponding service quality improvements for the more rural or outlying areas in each service territory.

Id., at 496.

Three years later virtually none of the Commission's expectations have been met by industry performance. While many urge that the fatal flaw is the expectation that duopolists will

2As approved by the majority the emphasis was upon facilitating price decreases. Price increases were conditioned upon justification for an upward departure from what the Commission already deemed high rates.

Duopoly carriers seeking an increase in rates should be required to substantiate their request with market studies specifically based on data within their MSAs. If a carrier wishes to support its request for an increase based on financial hardship, then cost support and income data of a form specified by CACD should be supplied, and the carriers should be prepared to respond to other PUC staff requests for supporting financial data. The carrier should also describe the utilization of its system relative to its current engineered capacity. Although a return on investment is not a driving force in setting rates, the carrier should be required to show its actual return on investment and projected return on investment based on proposed rates. Any major increase in return on investment from a three-year recorded average should be supported with specific reasons for the change. Any decreases in rates need not include a market study. Duopoly carrier should file such requests via the advice letter procedure.

Id. 36 CPUC2d at 496.

engage in meaningful competition, the industry has a different explanation as to why basic cellular rates in all segments of the California market have remained at their historic high levels. It is all the Commission's fault! The flexible pricing scheme which permitted carriers to reduce rates up to 10% on one days notice but required a substantiation for rate increases in an advice letter filing has "chilled" the carriers' desire to lower prices. Why? Because of a fear that once a price was lowered the Commission would obstruct a movement back to the old level. We need not comment on the merits of this argument for we intend to test its underlying premise.

The proposed guidelines are intended to give carriers that lower prices flexibility to raise rates to previous levels effective on one day's notice. No justification for the return to previous rate levels will be required. During the pendency of our Phase III proceeding existing rates will serve as a cap absent a justification for higher exactions in conformity with our order in Phase II. Adoption of this instant down with a right of return policy is voluntary with respect to each carrier. Whether it frees the industry to engage in the rate reductions allegedly thwarted by the terms of our Phase II orders will quickly be known. Those results will be far more telling than advocacy in determining whether competition can be trusted to stand in lieu of regulation in vindicating the public interest.

...

The guidelines are intended to serve as an interim measure subject to suspension or modification upon Commission action in Decision (D.) 92-10-026 rehearing requests and subject to the issuance and resolution of an investigation into mobile telephone service and wireless communications. Irrespective of its tenure, the guidelines are seen as an opportunity to simplify the existing cellular regulatory framework and to provide cellular carriers an opportunity to demonstrate that cellular competition does exist in California.

The guidelines are also intended to be used as an alternative to satisfying Ordering Paragraph (O.P.) 9 1 of the Phase II Cellular Decision's stringent requirements (1990) 36 CPUC2d 464 at 516. Under the guidelines, cellular carriers that reduce rates would be assured that they could raise rates back to their current levels without justifying a return to

previous rate levels. The requirements of O.P. 9 would continue to apply for all rate increases beyond the carrier's existing rate levels.

Discussion

Comments and reply comments on the guidelines were received from cellular metropolitan and rural wholesale carriers, resellers, cellular associations, and organizations representing end users. They express unanimous support for the guidelines approach as a solution for price flexibility in the California cellular market. However, the guidelines did not fully satisfy the duopolists desire for flexibility. Contrary to the admonition in the assigned commissioner ruling, some parties sought to revisit Phase II Cellular issues. The invitation is declined. Such an expanded scope would require notice to the parties that additional issues would be considered and delay the implementation of the immediate opportunity for rate relief.

Several comments suggested a relaxation of the 60-day notice period to wholesale customers prior to the effective date of any rate increase. The purpose of the 60-day notice period is to afford wholesalers an opportunity to respond to rate increases. As facilities based carriers, duopolists have discretion in making rate changes, wholesale customers on the other hand are at the mercy of the duopolists. A wholesale customer will have no say as to when a rate increase will occur, whereas a duopolist can spend weeks or months studying market data before announcing a rate increase. The guidelines proposed a 60-day notice period for wholesale rate increases in order to give wholesale customers an opportunity to evaluate their options, i.e., pass on the rate increase to existing customers versus absorbing the increase and sustaining a loss in revenue. We therefore decline to reduce the notice period to wholesale customers for rate increases.

The facilities based carriers also argued for the expansion of rate changes from a rate element by rate element basis to a net impact of changes in an average cellular customer's rate structure. Net impact was defined to include tariff terms and conditions as well as rates. The cost of using a cellular phone includes a connection charge as well as charges for peak and off peak usage. Under the current proposal any reduction for one element would have to match with a corresponding reduction in the wholesale rate in order to maintain the current margin. We desire such an approach because of its ministerial character. Thus, we decline at this time to adopt the recommendation made by the duopolists. One of the primary purposes of this decision is to address the allegations of the duopolists that California has high cellular rates because of regulation. We believe adopting a net impact approach will produce regulatory gridlock because the parties involved will not be able to reach consensus on what constitutes an average customer's rate structure. However, if all the parties to this proceeding are able to reach consensus on a formula or approach to implementing a net impact analysis, we will entertain a petition to modify the rate element by rate element approach to modifying rates.

An expansion of the guidelines to include more flexible proposals brought forth in the comments and reply comments may be considered in the future. For example, an expansion of promotional offerings is currently being considered in Los Angeles Cellular Telephone Company's petition for modification of the Phase II Decision as modified by D.90-10-047 and D.92-02-076.

Therefore, the guidelines circulated for comment should be adopted in whole.

Findings of Fact

1. The assigned Commissioner to this investigation issued a ruling seeking comments on cellular rate band pricing guidelines.
2. All parties of record were served a copy and invited to comment on rate band pricing guidelines.
3. Comments received from interested parties unanimously supported cellular service pricing flexibility.
4. All comments and reply comments received from interested parties addressing the guidelines were considered in establishing an interim rate band pricing guidelines for cellular utilities.

Conclusions of Law

1. Cellular rate band pricing guidelines should be adopted to the extent provided below.
2. Because of public interest in competitive cellular service, the following order should be effective immediately.

INTERIM ORDER

IT IS ORDERED that:

1. Cellular carriers and resellers shall have the option of implementing the rate band pricing guidelines attached to this order, as Appendix A.
2. The rate band pricing guidelines shall be used as an interim procedure subject to suspension or modification upon Commission action in Decision (D.) 92-10-026 rehearing requests and issuance and resolution of an investigation into mobile telephone service and wireless communications.

I.88-11-040, A.87-02-017 COM/DWF/jrd *

3. The Executive Director shall mail a copy of this order to all certificated cellular wholesalers and cellular resellers.

This order is effective today.

Dated April 21, 1993, at San Francisco, California.

DANIEL Wm. FESSLER

President

PATRICIA M. ECKERT

NORMAN D. SHUMWAY

P. GREGORY CONLON

Commissioners

Appendix A

R A T E B A N D P R I C I N G G U I D E L I N E S

GENERAL RULES

1. These rate band pricing guidelines are established within the regulatory framework authorized in the Phase II Cellular Decision (D. 90-06-025), to allow more pricing flexibility to cellular carriers and resellers.
2. This rate band pricing flexibility is available to any cellular carrier or reseller requesting pricing flexibility by advice letter that specifically follows these guidelines. The advice letter will be considered a compliance filing and will be effective on the date filed.
3. The existing tariffed wholesale and retail rates, for rate plans in effect at the time the company's rate band guideline advice letter is filed, will be considered the rate band price ceilings for those plans. Rates for these guidelines will be defined as any rate element (i.e. recurring rate) or charges (i.e. any non-recurring rate). No retail or wholesale rate can be raised above the established ceiling pursuant to these guidelines.
4. The cellular companies have the option of choosing when to include a rate plan and which rate plans, if any, the company wants under the rate band pricing guidelines. Tariffs for any rate plan submitted under the rate band guidelines must state in the advice letter filing that the plan is submitted under the rate band guidelines, and identify in the tariff both the ceiling rates, which are the current tariffed rates, and the new rates under separate column headings next to each other.
5. Rate band pricing guidelines apply to tariffed rates only and do not apply to tariffed terms and conditions. Changes to terms and conditions, including early termination penalties, can be made under existing G.O. 96-A requirements and should not be combined with rate changes in rate band tariff filings.
6. New rate plans, which are different from existing rate plans, cannot be included under the rate band pricing guidelines until the plans become effective tariffs under existing rules. For example a new plan filed under temporary tariff or regular notice cannot be considered under the rate band pricing guidelines until any protests filed against the plan have been resolved and the new plan becomes permanent.

RATE REDUCTIONS

7. For the rate band pricing guidelines only, any tariffed rate in a rate plan may be reduced by any amount through the filing of an advice letter. The new rate(s) will be effective on the date the advice letter is filed. Master customer tariffs can be reduced under these guidelines as long as the minimum margin over wholesale rates is maintained per O.P. 18 of D.90-06-025, as modified by D.90-10-047.

8. These rules do not affect a carrier's ability to lower rates in rate plans the utility chooses not to include under the rate band pricing guidelines. However such lowered rates can not be raised pursuant to guidelines established herein. Instead the carrier must follow the procedures set forth in O.P. 9 of D. 90-06-025.

9. Rate reductions under a carrier's retail tariff need to have an exact, corresponding reduction to the same rate element under the carrier's wholesale tariff, which maintains a consistent per cent between current wholesale and retail rate offerings and reduced rates requested under these guidelines.

For example, if the access charge under the carrier's retail basic plan was reduced by 10%, the advice letter filing must also include a 10% reduction in the access charge of the wholesale basic plan. If the retail access charge element ceiling is \$45.00 and is reduced to \$40.50, then the wholesale access charge needs to be reduced by the same percentage from the ceiling rate of \$32.26 to \$29.03.

10. If a carrier has a retail service currently tariffed which does not have a direct, corresponding wholesale equivalent service, and the carrier wants to file tariff changes to the retail service under these rate band guidelines, then the carrier must file a direct, corresponding wholesale equivalent service. The rate margins for the carrier's new wholesale equivalent offering must be filed using the same margins as are currently found under the carrier's basic plan. This rate band requirement is consistent with the existing policy regarding wholesale service margins.

RATE INCREASES

11. As stated in the general rules above, each company's existing retail and wholesale rates are the rate ceiling. No retail or wholesale rate may be raised above that price ceiling without a showing according to O.P. 9 of D. 90-06-025.

12. Advice letters for retail rate increases that do not exceed the rate band ceiling shall become effective on one day's notice. Rates for customers under contract cannot be raised during the contract period agreed to by the customer.
13. Each retail customer must be individually notified of a rate increase (e.g. bill inserts, bill notices, or letters). Newspaper notices are not acceptable. A copy of the retail customer notice must be submitted with the advice letter to CACD.
14. Wholesale rate increases require 60 days notice to wholesale customers (resellers) or master customers prior to the effective date of the rate increase. During this time, resellers must notify their customers, if they intend to pass on the rate increase.
15. Each wholesale customer and master customer must be sent a copy of the advice letter indicating the rate increase. Newspaper notices are not acceptable.
16. Commission approval is not required for retail or wholesale rate increases which fall within the rate band, as long as margins are preserved and all other rate band guidelines are followed.
17. Wholesale rate increases must have an exact corresponding retail rate increase under the carrier's retail tariff which maintains the margin. The retail rate increase need not be concurrent with the wholesale rate because of the different notice requirements. Retail rates may of course be raised without raising wholesale rates, up to the existing price ceiling.

(END OF APPENDIX A)

COM/JBO/kpc **

Mailed

OCT, 9 1992

Decision 92-10-026 October 6, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the regulation of
cellular radiotelephone utilities.

)
) I.88-11-040
) (Filed November 23, 1988)

And Related Matter.

)
) Application 87-02-017
) (Filed February 6, 1987)

(See Appendix A for appearances.)

I N D E X

<u>Subject</u>	<u>Page</u>
OPINION	2
1. Summary	2
2. Background	3
3. Prehearing Conference	4
4. Workshop Report	5
5. Second PHC	5
6. Evidentiary Hearing	5
7. CRA's Motion for Commission Review of an ALJ Ruling	6
8. Reporting Requirement	8
8.1 Workshop Results	9
8.2 Evidentiary Hearing	10
8.3 Reporting Requirement Discussion	11
9. USOA Modifications	12
9.1 Workshop Results	14
9.2 DRA's Position	15
9.3 CRA's Position	16
9.4 Cellular Dynamics' Position	17
9.5 McCaw and Other Facilities-Based Carriers' Position	17
9.6 USOA Modification Discussion	19
9.7 Rate of Return Component	25
10. Reseller Switch	27
10.1 Resellers' Switch Discussion	30
11. Unbundled Tariffs	33
12. Facilities-Based Carriers' Affiliate Operations	42
12.1 Workshop Results	44
12.2 Prehearing Conference	45
12.3 Facilities-Based Carrier Affiliate Operations Discussion	45
13. 311 Comments	48

I.88-11-040, A.87-02-017 COM/JBO/kpc *

I N D E X

<u>Subject</u>	<u>Page</u>
Findings of Fact	51
Conclusions of Law	58
ORDER	61
Appendix A	
Appendix B	

O P I N I O N

1. Summary

By this decision we conclude our investigation into the regulation of cellular radiotelephone utilities which began on November 23, 1988. Specifically, we are:

- a. Rejecting the reporting requirements for the assessment and monitoring of cellular capacity utilization and capacity expansion proposed by the various parties;
- b. Amending the facilities-based carriers' Uniform System of Accounts (USOA) to incorporate cost allocations to segregate retail activities from wholesale and non-operating activities;
- c. Allowing resellers to petition to modify their Certificate of Public Convenience and Necessity (CPCN) to perform switching functions currently provided by the facilities-based carriers;
- d. Requiring the facilities-based carriers to unbundle their wholesale tariff; and
- e. Continuing the current ban on reseller affiliates of facilities-based carriers to provide service in the same markets where their affiliated facilities-based carrier provides retail services.

In concluding these proceedings, we have exhausted the steps we devised in D.90-06-025 to improve the original regulatory framework for cellular adopted by the Commission in 1984. We remain concerned about the actual level of competition in the facilities-based portion of the cellular market, and based on our experience in Phase III, about whether we can in fact obtain the intelligence about the operation of the duopoly market on which D.90-06-025 relied.

We also observe that the demand for cellular has expanded to the point where there are signs we may be reaching a broader